

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF BLOOMINGTON, MINNESOTA

Rachelle Rudowski,
Petitioner,
vs.
City of Bloomington,
Respondent.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above entitled matter came on for hearing before Administrative Law Judge Raymond R. Krause on August 19, 2009 at Bloomington Civic Plaza, Dakota Conference Room, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 pursuant to a Notice and Order for Hearing issued by the City of Bloomington (City). The record closed on August 19, 2009.

Rachelle Rudowski appeared on her own behalf (Petitioner). Lisa C. Netzer, Associate City Attorney, appeared on behalf of the City of Bloomington (City).

STATEMENT OF ISSUES

Whether the City has shown cause for termination of Ms. Rudowski as a City of Bloomington police dispatcher due to incompetence, as required by the Veterans Preference Act.¹

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Ms. Rudowski is an honorably discharged veteran.²
2. The City is a political subdivision of the State of Minnesota.
3. On June 2, 2009, Ms. Rudowski was given the option of resigning from the Bloomington Police Department, which hired her as a dispatcher on January 12,

¹ Minn. Stat. § 197.46.

²Testimony of Rachelle Rudowski.

2009, or termination of her employment would be recommended to the Chief of Police.³

4. On June 10, 2009, the City notified Ms. Rudowski in writing of the right to request a hearing within sixty (60) days pursuant to the Veterans Preference Act⁴ and Bloomington Employment Rules Section 18.4(a).⁵

5. On July 24, 2009, Ms. Rudowski notified the City in writing that she was requesting a Veteran's Preference Hearing and stated that she "did not voluntarily resign."⁶

6. On August 7, 2009, the City served a Notice and Order for Hearing on Ms. Rudowski in this matter and this contested case proceeding ensued.⁷

7. Ms. Rudowski was hired on January 12, 2009, as a dispatcher with the Bloomington Police Department. Prior to her employment with the City, Ms. Rudowski had nine years of previous work experience as a police dispatcher with the Cities of Hopkins and Minnetonka.⁸

8. The Cities of Hopkins and Minnetonka are smaller and less complex jurisdictions compared with the City of Bloomington. The City of Bloomington is 48 square miles with a population of approximately 90,000. The City of Hopkins has a population of approximately 20,000. In 2008, the City of Bloomington police dispatch responded to 55,000 calls for service.⁹

9. The typical course of training for a Bloomington Police Department dispatch trainee begins with training on the Computerized Aided Dispatch (CAD) system for approximately a week to ten days, working one on one with the CAD trainer.¹⁰

10. The CAD system is used by dispatchers to enter 911 call data into a computer that sends the information directly to the responding squad computer so officers can see the call information while responding to the call.¹¹

11. After initial CAD training, the trainee will sit at a dispatch console with an experienced dispatch trainer and begin actual call management during a typical shift. Initially, the trainer assumes most of the call responsibility which is gradually

³ Test. of Commander Kevin Hinrichs.

⁴ Minn. Stat. § 197.46.

⁵ Test. of R. Rudowski; Exhibit 23.

⁶ Ex. 23.

⁷ Test. of R. Rudowski.

⁸ *Id.*; Ex. 20.

⁹ Test. of K. Hinrichs.

¹⁰ *Id.*

¹¹ *Id.*

shifted to the trainee. During this period, a trainee will work with several different dispatch trainers.¹²

12. During dispatch training, the Certified Training Officer (CTO) assigned to a dispatch trainee will fill out a Daily Observation Report (DOR) that evaluates sixteen competency areas required for successful performance of dispatch duties. Each competency has a rating scale with specific performance standards keyed to each topic area with a comment section for each area. The rating scale is: 1 = Not Acceptable, 3 = Acceptable, 5 = Exceptional. The DOR is reviewed and signed by the trainee, the CTO and the Dispatch Supervisor.¹³

13. The sixteen areas evaluated on the DOR are as follows: Acceptance of Feedback; Attitudes Towards Communication Work; CAD Skills – Normal Conditions; CAD Skills – Moderate and High Stress Conditions; Computer Data Systems; Telephone Skills – Normal Conditions; Telephone Skills – Moderate and High Stress Conditions; Problem Solving/Decision Making; Radio – Use of Procedures; Radio – Comprehension; Clarity of Communication; Multitasking and Room Awareness; Knowledge of Department Policies and Procedures; Knowledge of Call Prioritization Procedures; Geography/Map Interpretation; and General Appearance.¹⁴

14. The training protocol requires that the trainee complete a certain set of tasks with increasing degree of complexity as part of their console training. Trainees progress through the training period according to their ability to assimilate the training content and their ability to manage the dispatch console operations.¹⁵

15. Early in Ms. Rudowski's training, CTOs approached Kevin Hinrichs, Commander of Bloomington Police Department Support Services Division which includes the Dispatch Center, with concerns about Ms. Rudowski's dispatch capabilities. Commander Hinrichs monitored Ms. Rudowski's training by reviewing the DORs and speaking with her immediate supervisor, Sergeant Jeff Schwiesow, Dispatch Center Supervisor and Ms. Rudowski's trainers.¹⁶

16. During training, Ms. Rudowski began to exhibit consistent deficiencies in specific competency areas in using the CAD system, learning the local geography, remaining focused when the call volume went up in the call center, issuing clear radio communications, mixing up information on medical calls, and prioritization of calls.¹⁷

17. Proper and effective use of the CAD system is critical to dispatching. Ms. Rudowski had trouble entering the correct codes into the CAD system and

¹² Test. of K. Hinrichs.

¹³ Exs. 2, 4, 7, 8, 9, and 11-22.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Test. of K. Hinrichs; see *generally* Exs. 1-22.

would go back and re-enter prior CAD entries causing confusion for officers in the field. Ms. Rudowski had trouble locating and assigning squad cars using the CAD system. This resulted in the wrong squad cars responding to calls, being on break, or being on duty.¹⁸

18. Ms. Rudowski had continuing trouble learning the geography of the City of Bloomington. Ms. Rudowski would transfer calls within the city boundaries to other jurisdictions and dispatch squads to calls outside of the city boundaries. Ms. Rudowski also mixed up east/west directions to callers and responding officers and would mix up victim and call addresses. Petitioner was unable to dispatch the correct squad to the call.¹⁹

19. Ms. Rudowski had trouble maintaining composure when the call volume increased. Ms. Rudowski became flustered and her skills deteriorated under pressure.²⁰

20. Ms. Rudowski consistently had trouble with her radio skills. She was soft spoken and difficult to understand over the radio. She consistently had trouble understanding the officers' radio transmissions. Ms. Rudowski lacked confidence in what she was saying and what information she was giving out and would broadcast wrong or incomplete information. When Ms. Rudowski became busy her tension was reflected in her voice creating an air of uncertainty for the callers and officers in the field. Police officers raised concern about Ms. Rudowski's call information and voice.²¹

21. Managing medical calls was a continuing problem for Ms. Rudowski. Ms. Rudowski gave misinformation to responding ambulance services by assigning the wrong priority to medical calls or sending Emergency Medical Technicians (EMTs) misinformation on how to respond to a call.²²

22. Ms. Rudowski had trouble prioritizing calls appropriately and would spend more time working on calls that were administrative in nature leaving more urgent, possibly life-threatening calls on hold.²³

23. Based on evaluations from training officers over time, a typical training period for Bloomington City police dispatch is generally between ten and twelve weeks. After which time, a dispatch trainee is ready to be put out on final evaluation. Final evaluation consists of a shift alone at the dispatch console with the dispatch trainee completely responsible for intake, management and response.²⁴

¹⁸ Test. of K. Hinrichs; Ex. 10.

¹⁹ Exs. 3 and 6.

²⁰ Exs. 5, 15, and 18

²¹ Test. of K. Hinrichs.

²² *Id.*; Ex. 18.

²³ Ex. 21.

²⁴ Test. of K. Hinrichs.

24. A dispatch trainee is not put out on final evaluation unless there is a consensus among training officers and dispatch supervisors that the trainee is ready for that responsibility. An employee hired in mid-January as a dispatcher would typically be ready for their final evaluation at the end of March. There was consensus among dispatch supervisors and training officers that Ms. Rudowski was not ready for her final evaluation at the end of March.²⁵

25. In April, Ms. Rudowski was provided remedial CAD training, again one on one with the CAD trainer. Ms. Rudowski was also provided a dispatch manual with call codes, descriptions of types of calls, suggested questions to ask and information to give and the number of squads to send.²⁶

26. Ms. Rudowski was given time to study on the job. Trainers developed quizzes on local geography for Ms. Rudowski which she repeatedly failed. Ms. Rudowski went on ride alongs with field officers to familiarize herself with the local landmarks and geography and to get a feel for what the officers hear and see.²⁷

27. During her tenure with Bloomington Police Department, Commander Hinrichs assigned five different dispatch trainers to Ms. Rudowski and met several times with the training officers to devise different training techniques to focus on Ms. Rudowski's deficiencies.²⁸

28. CTOs, supervisors and field officers continued to complain about Ms. Rudowski's dispatching capabilities. The extended training was beginning to strain the dispatch center. Staffing two dispatchers: Ms. Rudowski and a trainer, was costly and caused shift assignment issues.²⁹

29. Two weeks before Ms. Rudowski's employment with the City ended, trainers were still identifying serious concerns regarding her ability to function in the dispatch center effectively with less than two dispatchers in the room. Ms. Rudowski failed to show progress in many of the areas identified on the DORs during her twenty weeks of employment with the City.³⁰

30. On June 1, 2009, Commander Hinrichs met with Sergeant Schwiesow and all the training officers that had worked with Ms. Rudowski to discuss her lack of progress, and to consider whether there were any other ideas to remedy Ms. Rudowski's deficiencies. At this meeting, trainers were out of ideas and frustrated that Ms. Rudowski's training had gone on for twenty weeks without significant improvement.³¹

²⁵ *Id.*

²⁶ *Id.*; Exs. 21 and 22.

²⁷ Exs. 3, 6, and 11.

²⁸ Test. of K. Hinrichs.

²⁹ *Id.*

³⁰ Exhibits 20, 21, 22

³¹ Test. of K. Hinrichs.

31. Commander Hinrichs met with Ms. Rudowski on June 2, 2009, and advised her that he would be sending Chief Potts a written recommendation to terminate her employment as a Bloomington City Police Dispatcher and that until Chief Potts signs off on his recommendation, Commander Hinrichs would accept a letter of resignation. Ms. Rudowski was advised to go home and think about it, but she made a telephone call in Commander Hinrichs' office and used his computer to type her resignation letter.³²

CONCLUSIONS

1. Ms. Rudowski is an honorably discharged "veteran" within the meaning of the Veterans Preference Act³³ and is entitled to all of the Act's protections and benefits.

2. The City is a political subdivision of the state within the meaning of the Veterans Preference Act,³⁴ and its personnel practices are therefore subject to the Act's provisions.

3. Pursuant to Minn. Stat. §§ 14.55 and 197.481, the Administrative Law Judge and the City of Bloomington Merit Board have the authority to determine if Ms. Rudowski's employment termination was consistent with mandates of the Veterans Preference Act.

4. The City of Bloomington has complied with all relevant, substantive and procedural requirements of statute and rule. This matter is therefore properly before the City of Bloomington Merit Board and the Administrative Law Judge.

5. The City gave Ms. Rudowski proper and timely notice of the hearing in this matter.

6. The Veterans Preference Act³⁵ requires that a veteran be given notice of his or her right to a hearing to establish incompetency or misconduct prior to any action by a public employer that removes the veteran from his or her position.

7. The City gave Ms. Rudowski proper notification of her right under the Veteran's Preference Act to a hearing to establish incompetency or misconduct as grounds for removing her from her position prior to the hearing in this matter.

8. Ms. Rudowski requested the hearing to which she was entitled within the time prescribed by law and therefore did not waive her right to a hearing.

9. In an administrative proceeding, such as this,

³² *Id.*

³³ Minn. Stat. §§ 197.447 and 197.46.

³⁴ Minn. Stat. § 197.46.

³⁵ *Id.*

[t]he party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard. A party asserting an affirmative defense shall have the burden of proving the existence of the defense shall have the burden of proving the existence of the defense by a preponderance of the evidence.³⁶

10. The Veterans Preference Act ³⁷ provides in part:

No person holding a position by appointment or employment in the several counties, cities, towns, school districts and all other political subdivisions in the state, who is a veteran separated from the military service under honorable conditions, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing.

10. The City has the burden of proving by a preponderance of the evidence that removal of Ms. Rudowski from her City employment is based on her incompetency or misconduct.

11. Ms. Rudowski asserts as an affirmative defense to the charge of incompetence that the Bloomington Police dispatch training was unorganized and could have been more helpful to her success.

12. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

13. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

³⁶ Minn. R. 1400.7300, subp.5.

³⁷ Minn. Stat. § 197.46.

RECOMMENDATION

IT IS RECOMMENDED THAT:

The decision of the City of Bloomington to remove and discharge Petitioner, Rachelle Rudowski from her employment as a police department dispatcher be affirmed.

Dated: September 17, 2009

s/Raymond R. Krause

RAYMOND R. KRAUSE

Administrative Law Judge

Reported: Digitally Recorded

NOTICES

This Report is a recommendation, not a final decision. The Bloomington Merit Board will make a final decision after a review of the record. The Merit Board may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Merit Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the **City**. Parties should contact Kent T. Michaelson, City of Bloomington, 1800 W. Old Shakopee Road, Bloomington, Minnesota 55431 (952) 563-8700, to learn the procedure for filing exceptions or presenting argument. If the **City** fails to issue a final decision within 90 days of the close of the record, this report will constitute the final decision of the City under Minn. Stat. § 14.62, subd. 2a.

Under Minn. Stat. § 14.62, subd. 1, the City is required to serve its final decision on each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Minnesota Veterans Preference Act³⁸ provides that:

[n]o person holding a position by appointment or employment in the several counties, cities, towns, school districts and all other political subdivisions in the state, who is a veteran separated from the military service under honorable conditions, shall be removed from such position

³⁸ Minn. Stat. § 197.46.

or employment *except for incompetency or misconduct* shown after a hearing, upon due notice, upon stated charges, in writing.

[Emphasis added.]

In *Ekstedt v. Village of New Hope*,³⁹ the Minnesota Supreme Court further defined incompetency or misconduct in the following way:

The cause must be one which specially relates to and affects the administration of the office, and must be restricted to something of a *substantial nature directly affecting the rights and interests of the public*. The cause must be on *touching the qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office*. . . . In the absence of any statutory specification the sufficiency of the cause should be determined with reference to the character of the office, and the qualifications necessary to fill it.

(Emphasis added.)

The City's proposed discharge of Ms. Rudowski for cause is based on its assertions that during Ms. Rudowski's five month employment as a police dispatcher, she was consistently deficient in six critical dispatch competency areas. Namely, using the Computer Aided Dispatch (CAD) system; understanding the city geography; performing under pressure; radio communications; dispatching medical calls, and prioritization of calls.⁴⁰ Despite remedial training efforts that extended well beyond a typical period for dispatch training Ms. Rudowski did not improve.

Over 100 Daily Observation Reports (DORs) were completed on Ms. Rudowski during the course of her employment with the City of Bloomington. The exhibits introduced by the City are a sampling of the many DORs written for Petitioner during her employment with the City, and begin at the end of what would have normally been the end of her dispatch training.⁴¹ Out of the sixteen DORs submitted into evidence, Ms. Rudowski's average rating was 2.1, well below the minimum standard score of 3 or "acceptable."⁴²

The court in *Ekstedt*⁴³ determined that "cause" for discharge under the Veterans' Preference Act⁴⁴ must be substantial in nature and have a direct affect on public rights or interests.

³⁹ 193 N.W.2d 821, 823 (Minn. 1972).

⁴⁰ Exs. 1-22.

⁴¹ Test. of K. Hinrichs.

⁴² Exs. 2, 4, 7-9, and 12-22.

⁴³ 193 N.W.2d 821 (Minn. 1972).

⁴⁴ Minn. Stat. § 197.46.

The ability to master the six dispatch skill areas identified by the City goes to the core of police dispatch work.

Throughout Ms. Rudowski's training, and up until June 2, 2009, she was still struggling to enter correct information for responding officers into the CAD system. Commander Hinrichs testified that two squad cars respond to each call. For example, cars 1 and 2 would respond to a medical call and cars 3 and 4 would respond to a domestic. Often, Ms. Rudowski would enter the domestic information in the medical field and the medical information in the domestic field causing confusion for the responding officers. When Ms. Rudowski would go back and correct her entries, precious response time would be lost with officers waiting for the information.

Ms. Rudowski had continuing trouble learning the geography of the City of Bloomington. Ms. Rudowski often mixed up the east/west directions and was unable to provide city directions to callers. In April and May, well after the normal training period for a dispatcher, Ms. Rudowski was given geography quizzes and time to study on the job to help improve her knowledge of City geography. Her inability to get a handle on the City's geography caused numerous mix-ups in the field for responding officers.

As the call volume increased in the dispatch center, Ms. Rudowski had trouble keeping her composure which resulted in more mistakes and consequently, confusion in the field. Commander Hinrichs testified that if a dispatcher cannot keep their composure under pressure, they start making mistakes that have consequences. If a dispatcher is unable to think and make timely decisions directing the right people to the right places with the right resources, the reputation and service of the unit suffers. Commander Hinrichs testified that all of the training officers commented on Ms. Rudowski's inability to work under pressure.⁴⁵

Radio communication skills were also a problem for Ms. Rudowski. Many training and field officers commented that she was difficult to understand over the radio and she had trouble understanding the radio transmissions from the field officers. Ms. Rudowski lacked confidence in what she was saying and when the call volume went up, others could hear the tension in her voice creating an air of uncertainty for the callers and officers in the field.

The work of a police dispatcher has a direct affect on the public. Commander Hinrichs testified that the Dispatch Center is the link between the public calling in and the police officers responding.⁴⁶ The Bloomington Dispatch Center responded to over 55,000 calls last year, ranging from requests for directions to emergency life-threatening situations.⁴⁷ Police dispatchers need to be able to multi-task, problem solve and project confidence in a very dynamic environment. The public and police officers need to trust that the dispatcher will provide them correct information and assistance that they can rely on.

⁴⁵ Test. of K. Hinrichs.

⁴⁶ *Id.*

⁴⁷ *Id.*

Prior to her employment with the Bloomington City Police, Ms. Rudowski had nine years previous police dispatch experience with the Cities of Minnetonka and Hopkins.⁴⁸ The Bloomington Police Department is significantly larger and more complicated than either the Minnetonka or Hopkins Police Departments. The City is approximately 48 square miles compared to the City of Hopkins, which is significantly smaller. Bloomington Police have more specialized units and many more officers working at any given time than smaller jurisdictions.⁴⁹

Further the City asserts that at the end of what would be a normal training period of between ten to twelve weeks for police dispatchers, Ms. Rudowski was not competent to perform dispatch duties without the assistance of a trainer and that Ms. Rudowski's dispatch capabilities did not improve during her employment despite numerous remedial training efforts.⁵⁰

Conclusion

For the reasons set forth above, the ALJ recommends that the City of Bloomington Merit Board affirm the actions of the City in terminating Petitioner's employment.

R. R. K.

⁴⁸ Test. of R. Rudowski.

⁴⁹ Test. of K. Hinrichs.

⁵⁰ *Id.*